

(2017) 01 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 12690 of 2016

Ramdas Daulat Sadarao

APPELLANT

Vs

The Divisional Controller, Maharashtra State Road Transport
Corporation, Dhule Division, Dhule

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Citation : (2017) 1 ALLMR 506 : (2017) 152 FLR 851 : (2017) LabLR 204 :
(2017) 1 LLJ 432

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Patil, V.Y. Advocate, for the Petitioner; Shri Bagul, D.S.
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.(Oral) - Since Shri Bagul, learned Advocate is the Standing Counsel for respondent MSRTC, Dhule, I have heard him for the respondent along with Shri Patil learned Advocate for the petitioner.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment of the Industrial Court dated 19.7.2016, by which, his Complaint (ULP) No.91 of 2012 has been dismissed and the punishment of reduction of pay by three stages has been sustained.

5. Shri Patil has strenuously criticized the impugned judgment. He submits that the petitioner was charge sheeted for having consumed liquor while on duty and being a Driver, the bus trip was cancelled because of his inability to drive. The petitioner had taken a stand that he had consumed cough syrup. After the charges were held to be proved, he was issued with an order of punishment, by

which, his pay was reduced by three stages.

6. Grievance is that the Bus Conductor alone was examined. No independent witness was examined No passenger was examined. There is no loss caused to the MSRTC. It is, however, conceded that there was no stand taken by the petitioner before any authority at any stage that the Conductor had developed animosity towards the petitioner.

7. Shri Bagul has defended the impugned judgment and has brought to my attention that this petitioner was earlier punished on 36 occasions by imposing minor penalties of fine / censure. However, he was once dismissed from service for unauthorized absenteeism and was reinstated under the Court orders.

8. I find from the record that when the Bus had halted at 7.00 pm at village Hatdhuhi on the Shahda Bhadgaon route on 15.10.2011, the petitioner, who is a Bus Driver, claimed to have consumed cough syrup. On 16.10.2011 on the return journey, the Conductor found that he was not able to maintain his composure and was not able to drive the Bus properly. Based on the complaint of the Bus Conductor, the petitioner was arrested, was taken to a Police Station and was subjected to medical examination The medical report indicates that he had consumed liquor, but which also states that he may not be under the influence of intoxication.

9. On the testimony of the Conductor, it was revealed that on the night of 15.10.2011, the petitioner had gone to the village and had returned back by about 9.30 pm after consuming liquor. The Conductor further testified in the enquiry that as the petitioner could not drive the Bus properly and the passengers had got agitated, he was constrained to stop the Bus and call for the Traffic Controller. The Medical Officer of the Rural Hospital, Bhadgaon has noted that the petitioner was smelling of alcohol, was unsteady and his pupils were dilated With this evidence before the Enquiry Officer, the petitioner was held guilty of the charges levelled upon him. It was in this backdrop that the Industrial Court concluded that the Enquiry was conducted by adhering to the principles of natural justice and the findings of the enquiry officer are fair.

10. The contention of Shri Patil as regards non-examining passengers is concerned, the same has to be rejected in the light of the judgment delivered by the Honourable Supreme Court in the matter of KSRTC v. B.S. Hullikatti [AIR 2001 SC 930] and KSRTC v. A.T. Mane [(2005) 3 SCC 254]. The settled law is that the passengers cannot be examined in each and every case and non-examination of the passengers will not affect the disciplinary proceedings.

11. In so far as the strenuous submissions of Shri Patil that the punishment imposed is not commensurate to the gravity and seriousness of the misconduct is concerned, the same has to be rejected. It is settled law that a blemished past service record operates as an aggravating factor.

12. Consuming liquor while on duty and performing the function of a Driver of an

ST Bus which has a sitting capacity of 60 and standing capacity of 20, per se is a grave and serious misconduct. The misconduct would not become grave only after such a Driver causes an accident resulting in death of passengers or persons on the street. It is not expected of an employer to wait till such a Driver commits an accident resulting in fatalities. In this backdrop, I express astonishment that the respondent / Corporation has not imposed the punishment of dismissal from service on the petitioner and more so when there are 36 misconducts mentioned in the default card.

13. Notwithstanding the above, the Honourable Supreme Court in the matter of Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain [2005 (104) FLR 291], has held that merely because the punishment is disproportionate would not warrant interference of this Court. The punishment must amount to a shockingly disproportionate punishment. In this backdrop, the judgments cited by Shri Patil, Maharashtra State Road Transport Corporation and Ashok Laxman Wadkar [2003 (99) FLR 465] and Subhash v. Divisional Controller, MSRTC [AIR 2010 SC 2484] would be of no assistance.

14. Considering the above, this petition being devoid of merit is, therefore, dismissed. Rule is discharged.